

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO**

**PACER Cover Sheet
for Electronically Filed Documents**

Any data shown here are current as of 06/10/06 . Any element of information on this form, except the received date, is subject to change as changes may be made to the Court's official docket.

Case Title: Los Alamos National Bank v. Jeffrey W. Potter, et al.

Case Number: 05-01149

Document Information

Description: Order Granting [23-1] Motion To Reconsider Order [22-1] Abstaining From Adjudicating This Adversary by Los Alamos National Bank.

Received on: 2006-02-09 11:44:02.000

Date Filed: 2006-02-09 00:00:00.000

Date Entered On Docket: 2006-02-09 00:00:00.000

Filer Information

Submitted By: Ellen Snyder

If this form is attached to the document identified above, it serves as an endorsed copy of the document as it existed on the above date. To confirm that nothing has changed since then, review the docket.

**UNITES STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO**

In re:

**Jeffery Watson Potter,
Debtor.**

No. 11-05-14071 MS

**Los Alamos National Bank,
Plaintiff,**

v.

Adv. No. 05-1149 M

**Jeffery W. Potter, Legal Defense
and Maintenance Trust of California
Dated 8/25/03, Mariana Danilovic, Trustee,
Martin S. Friedlander, Kitty Miller,
French & French Fine Properties, Inc.
and Summit Investment Company, LLC,
Defendants.**

ORDER GRANTING PLAINTIFF'S MOTION FOR RECONSIDERATION

THIS MATTER is before the Court on Los Alamos National Bank's Motion ("LANB") for Reconsideration of Order Abstaining From Adjudicating This Adversary (the "Motion for Reconsideration") filed on January 23, 2006. Motions for reconsideration filed within ten days of the entry of a judgment or order are governed by Rule 59(e), Fed.R.Civ.P., as incorporated into the bankruptcy rules by Rule 9023, Fed.R.Bankr.P. *See Buchanan v. Sherrill*, 51 F.3d 227, 230 n.2 (10th Cir. 1995) ("No matter how styled, we construe a post-judgment motion served within ten days of the entry of judgment and challenging the correctness of the judgment as a motion under Rule 59(e)."). Having considered the Motion for Reconsideration, the arguments of counsel and the portion of the Order Denying Motion to Dismiss and/or To Transfer Venue and Abstaining From Adjudicating This Adversary Proceeding (the "Order") in which the Court abstained from adjudicating this adversary

proceeding, the Court will grant the Motion for Reconsideration.

Prior to the filing of this bankruptcy proceeding, LANB brought suit against the Debtor, the Legal Defense and Maintenance Trust of California Dated 8/25/03, Mariana Danilovic, Trustee and Martin S. Friedlander, which is currently pending in the First Judicial District Court, Santa Fe County, *LANB v. Jeffrey W. Potter, et al.*, No. D-101-CV-2004-1145 (the “State Court Action”). Upon the filing of this bankruptcy proceeding, the State Court Action was stayed as to the Debtor.

On January 18, 2006, the Court entered an order approving an agreement between LANB and the Debtor to lift the stay with respect to the State Court Action. *See* Stipulated Order Granting Los Alamos National Bank’s Motion to Modify Automatic Stay, attached as Exhibit 1 to Motion for Approval of Agreement Between Debtor and Los Alamos National Bank to Modify Automatic Stay filed on August 10, 2005 (Doc. No. 36) and approved by Order Approving Agreement Between Debtor and Los Alamos National Bank to Modify Automatic Stay entered on January 18, 2006 (Doc. No. 111) (collectively, the “Stay Order”). Despite the broad language of the Stay Order, the State Court Action does not seek resolution of the precise issue presented in this adversary proceeding, i.e. the rights of LANB, Friedlander and the other defendants to an escrow account at Rio Grande Title Company of Santa Fe containing proceeds of a pre-petition sale in the amount of \$76,428.45 (the “Funds”). Moreover, several of the defendants named in this adversary proceeding who might assert a claim to the Funds, are not parties to the State Court Action.

THEREFORE, IT IS ORDERED that the Motion for Reconsideration is GRANTED and that portion of the Order indicating that the Court will abstain from hearing this adversary proceeding is set aside.

The scheduling conference previously set will be held as scheduled on February 17, 2006 at

11:15 am.



MARK B. McFEELEY

UNITED STATES BANKRUPTCY JUDGE

I certify that on the date shown on the attached document verification, a true and correct copy of the foregoing was either electronically transmitted, faxed, delivered or mailed to the listed counsel and/or parties.

James R. Jurgens
Attorney for Plaintiff
100 LaSalle Circle, Suite A
Santa Fe, NM 87505


Summit Investment Company, LLC
Attention: Jeffrey W. Potter
P.O. Box 8280
Santa Fe, NM 87504-8280

Martin S. Friedlander, Esq.
Defendant pro se
10350 Wilshire Blvd.
Suite 603
Los Angeles, CA 90024

Alice N. Page
U.S. Trustee
P.O. Box 608
Albuquerque, NM 87103

Chris W. Pierce
Attorney for Debtor
P.O. Box 6
Albuquerque, NM 87103

Eric Sommer, Esq.
Attorney for French & French
P.O. Box 1984
Santa Fe, NM 87504



Ellen C. Snyder
Law Clerk

Legal Defense and Maintenance Trust
c/o Mariana Danilovic, Trustee
20380 Big Rock Drive
Malibu, CA 90024

Kitty Miller
P.O. Box 8748
Santa Fe, NM 87504